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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSHUA ASSIFF,

Plaintiff,

v.

**COUNTY OF LOS ANGELES;
SHERIFF DEPUTY BADGE
NUMBER 404532;
And DOES 1 through 10,**

Defendants.

Case No. 2:22-cv-05367 RGK (MAAx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

DATE: June 26, 2023
TIME: 9:00 a.m.
COURTROOM: 850

Action Filed: August 3, 2022
Pretrial Conference: July 10, 2023
Trial Date: July 25, 2023

Assigned to: Hon. R. Gary Klausner,
District Judge, Courtroom 850

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, JOSHUA ASSIFF (hereinafter “Plaintiff”) hereby respectfully submits the following memorandum of points and authorities in opposition to the motion for partial summary judgment filed in this action by Defendants COUNTY OF LOS ANGELES and TRAVIS KELLY (hereinafter “Defendants”)

I. INTRODUCTION

Plaintiff is a 21-year old black male and a student at Antelope Valley College where he plays basketball. Plaintiff was driving from his home to a teammate’s house in order to carpool to basketball practice. Plaintiff was obeying all traffic laws and regulations and made a legal right hand turn on a green light. For no apparent reason and without probable cause, Defendant Kelly, a male Caucasian motorcycle Sheriff’s sergeant, pulled Plaintiff over. For no apparent reason and without probable cause, Defendant Kelly – as well as other deputies who subsequently responded to the call – all tasered, choked, pepper sprayed, beat and arrested Plaintiff. Plaintiff has asserted two causes of action – the First Cause of Action against Defendant for violation of 42 USC § 1983 (arrest without probable cause and with excessive force), and the Second Cause of Action against the County of Los Angeles for violation of 42 USC § 1983 (*Monell* liability).

Defendants bring this motion for partial summary judgment. Defendants argue that the arrest was made with probable cause. However, as explained below, the evidence, including the video of the events leading up to the arrest, show that there was no probable cause for either the traffic stop or the subsequent arrest. At the least, there is a trial issue of fact.

Defendants argue that Defendant Kelly should be protected by qualified immunity. However, again as explained below, Defendant Kelly’s actions were objectively unreasonable and a clear violation of Plaintiff’s Constitutional rights.

Defendants argue that the County should not be liable for Defendant Kelly’s conduct (*Monell* liability). However, Defendant Kelly has a very checkered past.

1 Defendant Kelly was permitted to continue his abusive conduct towards motorists
2 and the public due to the County's inadequate supervision, discipline and training.
3 The County coddled Defendant Kelly and encouraged his violations of stated
4 policies with promotion. This, combined with the findings of the U.S. Department
5 of Justice and the County's own monitors demonstrate that the County had an
6 unstated policy of employing deputies to bully and harass African American drivers
7 by way of initiating frivolous traffic stops, making arrests without probable cause,
8 and using excessive force.

9 Finally, Defendants argue that Defendant Kelly should not face the prospect
10 of punitive damages. Defendants argue there is no evidence of malice, oppression,
11 or disregard of Plaintiff's rights. Obviously, this is a question for the jury. The
12 evidence suggests Defendant Kelly acted without probable cause and his violent use
13 of force was excessive, objectively unreasonable and inconsistent with generally
14 accepted police practices. Certainly, the jury could reasonably determine that
15 Defendant Kelly acted in malice, oppression, or in disregard of Plaintiff's rights.

16 **II. STATEMENT OF FACTS**

17 **A. The Traffic Stop And Arrest**

18 On or about September 24, 2021, Plaintiff, a 21-year-old black male, was
19 pulled over and subsequently arrested by a male Caucasian motorcycle officer,
20 Defendant Kelly. (See, Plaintiff's Response To Defendant's Separate Statement Of
21 Uncontroverted Facts "Response To Fact" 1) There was no probable cause for the
22 traffic stop, let alone the subsequent arrest. The light was green when Plaintiff
23 made a legal right hand turn. (See, Plaintiff's Additional Facts Giving Rise To
24 Triable Issues "Additional Fact" 101) There were no pedestrians in the crosswalk
25 when Plaintiff made a legal right hand turn. (Additional Fact 102) The incident was
26 captured on video by Defendant Kelly once he activated his non-department issued
27 personal Body Worn Camera ("BWC") as he was dismounting his motorcycle at the
28 outset of the traffic stop. (Response To Fact 3) Plaintiff was polite and courteous to

1 Defendant Kelly, always referring him as either “officer” or “sir.” Plaintiff stated
2 his position that the light was in fact green in response to Defendant Kelly’s false
3 assertions that the light was red. (Response to Fact 4)

4 Defendant Kelly claims without evidence that he could smell a strong odor of
5 burnt marijuana emitting from Plaintiff’s vehicle. However, there was not a smell
6 of burnt marijuana emanating from Plaintiff’s vehicle. It was 7:50 a.m. in the
7 morning. Plaintiff, a college athlete, was on his way to basketball practice.
8 Plaintiff did not ingest any marijuana that morning. Plaintiff did not smoke any
9 marijuana on that morning. Plaintiff never smoked marijuana in his Vehicle.
10 (Additional Fact 103)

11 Plaintiff was not agitated and his speech was not rapid. (Additional Fact 104)
12 Once Plaintiff was requested to produce his driver’s license for the first time,
13 Plaintiff immediately complied and reached for his wallet. (Additional Fact 106)
14 Even Defendant Kelly in his deposition conceded that Plaintiff was in the process
15 of producing his driver’s license when Defendant Kelly, not Plaintiff, re-engaged
16 Plaintiff in the debate over the color of the light. (Additional Fact 107)

17 After only 42 seconds into a traffic stop for a minor traffic infraction, Kelly
18 threatened to throw Plaintiff in jail. Following this seemingly irrational threat,
19 Plaintiff stated his intention to record the interaction on his mobile phone.
20 (Additional Fact 108) Immediately after Plaintiff stated his intention to record the
21 interaction on his mobile phone, Defendant Kelly threw open the door to Plaintiff’s
22 vehicle and grabbed Plaintiff’s arm in an effort to prevent Plaintiff from recording
23 the encounter. (Additional Fact 109)

24 After the fact, Defendant Kelly claimed that Plaintiff had kicked him when
25 Defendant Kelly first grabbed Plaintiff’s arm, and Defendant Kelly used that
26 alleged assault and battery on an officer to justify his use of force against Plaintiff.
27 However, Plaintiff never kicked Defendant Kelly. (Additional Fact 110) Defendant
28 Kelly conceded in his deposition the he did not see the alleged kick. His

1 motorcycle pants were thickly padded and it may have been Plaintiff's knee with
2 which he came into contact. (Additional Fact 111)

3 After only a mere 73 seconds into a traffic stop for a minor traffic infraction,
4 Defendant Kelly threatened to pepper spray Plaintiff. In response to that irrational
5 threat, Plaintiff requested to speak with Defendant Kelly's supervisor. (Additional
6 Fact 112) In immediate response to Plaintiff's request to speak with Defendant
7 Kelly's supervisor, Defendant Kelly deployed the pepper spray. The request to
8 speak to the supervisor was at 07:54:06, the pepper spray was deployed at 07:54:07
9 and Defendant Kelly can be heard angrily shouting "I AM THE SUPERVISOR" as
10 he sprayed the pepper spray into Plaintiff's face. (Additional Fact 113) Defendant
11 Kelly's use of pepper spray on Plaintiff was objectively unreasonable, excessive
12 and inconsistent with generally accepted police practices. (Additional Fact 129)

13 At about 1 minute and 25 seconds into the BWC footage, a second Deputy
14 (identified as Deputy Joshua Clark) can be seen attempting to aid Defendant Kelly
15 by pulling Plaintiff out of the vehicle with a choke hold around Plaintiff's neck
16 which was excessive, objectively unreasonable and inconsistent with generally
17 accepted police practices. (Additional Fact 139) During the struggle Defendant
18 Kelly punched Plaintiff in the face. After the fact, Defendant Kelly attempted to
19 justify punching Plaintiff in the face by claiming that Plaintiff had punched Deputy
20 Clark in the Chest. Plaintiff did not punch Deputy Clark in the chest. (Additional
21 Fact 114) Defendant Kelly in his deposition conceded that he could not see the
22 punch on the video and had trouble locating where in the video it allegedly
23 occurred. (Additional Fact 115) Again, Defendant Kelly fabricated this claimed
24 assault and battery on an officer to justify, after the fact, his unlawful use of force
25 against Plaintiff. Defendant Kelly's punch to Plaintiff's face was excessive,
26 objectively unreasonable and inconsistent with generally accepted police practices.
27 (Additional Fact 138)
28

1 Plaintiff's resistance was passive. He did not kick or punch anyone. He was
2 merely trying to prevent himself from being pulled from his vehicle. (Additional
3 Fact 136) As can be seen from Exhibit B, Defendant Kelly's BWC, generally,
4 Plaintiff passively resisting the deputies' efforts to remove him from the vehicle,
5 the "struggle" was one sided as the deputies pepper sprayed, punched and choked
6 Plaintiff. (Additional Facts 110 and 114)

7 At about 2 minutes and 20 seconds into the stop, a third Deputy (Deputy
8 Garrett Gallegos) arrived on the scene. (Response to Fact 20) Shortly thereafter,
9 Deputy Gallegos deployed his Taser to Plaintiff's back through direct contact.
10 (Response to Fact 21) At about 2 minutes and 27 seconds, the three Deputies were
11 able to bring Plaintiff out of his vehicle and to the ground next to it. (Response to
12 Fact 22) After being removed from his vehicle, Plaintiff was not resisting. He was
13 involuntarily thrashing about as a result of being pepper sprayed in the face and
14 tased in the back. He did not kick or punch. (Additional Fact 117) At about 2
15 minutes and 36 seconds, Deputy Gallegos again deployed his Taser to Plaintiff.
16 (Response to Fact 24) Defendant Kelly ordered Plaintiff to roll onto his stomach
17 and place his hands behind his back, and warned that the Taser would be used again
18 if he did not comply. (Response to Fact 25) Plaintiff then rolled onto his stomach
19 and was placed in handcuffs. (Response to Fact 26)

20 Defendant Kelly's failure to use de-escalation techniques was inconsistent
21 with generally accepted police practices. (Additional Fact 118) Defendant Kelly
22 unnecessarily escalated the contact with Plaintiff creating the need to use force that
23 would have likely not have been otherwise necessary. (Additional Fact 123) Had
24 Defendant Kelly followed generally accepted police practices and his department
25 policy and used de-escalation to gain voluntary compliance, it is likely that no force
26 would have been necessary. (Additional Fact 128)

B. Defendant Kelly's Checkered Past

Defendant Kelly is a bad motorcycle cop. He has repeatedly been subject to complaints from members of the public for being rude and abusive. (Additional Fact 140)

In July of 2013, Defendant Kelly was rude to a motorist during a traffic stop. He threw the driver's license back at the motorist (a nurse), took back the citation, changed it, gave it back to the motorist, and said, "now it's double." (Additional Fact 141)

In November of 2019, Defendant Kelly was dealing with a motorist involved in a collision. The motorist complained that Defendant Kelly was incomplete, defensive, disrespectful and condescending. The Department investigated and concluded, "our employee could have been better." (Additional Fact 142)

In February of 2020, Defendant Kelly was accused of harassing a motorist and arresting a motorist for merely having an expired registration. After an investigation of the complaint, the Sheriff's Department again concluded, "our employee could have been better." (Additional Fact 143)

In April of 2020, Defendant Kelly was subject of a personnel complaint while dealing with a member of the public who called into the station to complain about excessive motorcycle noise. Defendant Kelly, a motorcycle cop and rider, reportedly refused to accept the report, was rude, and threatened to hang up. (Additional Fact 144)

In June of 2022, Defendant Kelly was once again rude to a motorist. He threw the motorist's credentials back at the motorist and told him to "enjoy your citation." After an investigation of the complaint, the Sheriff's Department once again concluded, "our employee could have been better." (Additional Fact 145)

These repeated complaints show that Defendant Kelly simply does not have the temperament, nor the manners, to be a law enforcement officer dealing with motorists and other members of the public. (Additional Fact 146) However, there

1 are even more troubling incidents in Defendant Kelly's past reflecting on his
2 disposition and temperament.

3 In June of 2014, Defendant Kelly while riding a motorcycle off-duty was
4 himself pulled over by a sergeant with the LAPD for speeding. Defendant Kelly
5 was rude to the sergeant, questioned where he worked, and drove off from the
6 traffic stop before the sergeant could cite him. The Sheriff's Department
7 investigated the incident and yet again officially concluded "the actions of
8 [Defendant Kelly] should have been better." Internally, Defendant Kelly's
9 supervisor found, "[y]our actions were unprofessional and your behavior brought
10 discredit to yourself and the Department." (Additional Fact 147)

11 In deposition, while discussing the June 2014 incident, Defendant Kelly
12 confessed that he did not like working for an African American captain and only
13 signed the performance log entry (COLA-40) because his signature was coerced
14 from him. Allegedly, the African American captain threatened to withhold
15 Defendant Kelly's promotion unless he signed the performance log entry. If
16 Defendant Kelly is to be believed, he was required to admit to rude, unprofessional,
17 discrediting, officious, and overbearing (if not illegal) conduct to secure his
18 promotion to sergeant. Defendant Kelly also admitted to signing the performance
19 log entry so he could stop working underneath the African American captain whom
20 he did not like. (Additional Fact 148)

21 In July of 2015, Defendant Kelly was criticized for his conduct leading up to
22 a use of force incident against an Hispanic inmate. According to reports, Defendant
23 Kelly had a history of conflict with this Hispanic inmate. Defendant Kelly caused
24 this inmate to be sentenced to 29 days of discipline for allegedly being
25 disrespectful, and yet it was Defendant Kelly who had been disrespectful. He said
26 to the inmate, "What the fuck are you, a Southsider (an Hispanic jail gang
27 member)" After sentencing this Hispanic inmate to discipline, Defendant Kelly
28 taunted the inmate outside his cell. Defendant Kelly called the Hispanic inmate a

1 “faggot” and “little punk.” When the inmate responded by saying he should have
2 taken his shot at Defendant Kelly at the discipline hearing, Defendant Kelly
3 responded, “Oh you want a chance?” Then Defendant Kelly, against department
4 policy, ordered the inmate’s cell door opened, stood in the doorway, and said,
5 “Here’s your shot.” A physical altercation between the inmate and Defendant Kelly
6 ensued and the inmate claimed he was beaten and choked. (Additional Fact 149)

7 Defendant Kelly was criticized for this use of force by his supervisor for
8 there being no video of the incident, there was no radio broadcast of the incident,
9 and Defendant Kelly opened the cell door against department policy. An internal
10 affairs investigation apparently resulted in Defendant Kelly being suspended for 4
11 days, but the suspension was not given until almost three years later in April of
12 2017. Furthermore, Defendant Kelly in his deposition admitted that he never
13 served the 4 day suspension. (Additional Fact 150)

14 Defendant Kelly has a recorded history of animosity towards people of color.
15 Defendant Kelly disliked and could not stand working for an African American
16 captain (Additional Fact 148) Defendant Kelly had a running feud with an
17 Hispanic inmate resulting in Defendant Kelly challenging the inmate to a fight.
18 (Additional Fact 149)

19 In spite of all of these glaring warning signs showing that Defendant Kelly is
20 unfit to be a Sheriff’s Deputy, he was nevertheless promoted to sergeant and in his
21 July 2020 performance evaluation his supervisor wrote, “you are an outstanding
22 sergeant and a key member of my team.” (Additional Fact 151)

23 **C. Defendant Kelly’s Lack Of Supervision, Discipline & Training**

24 The County provided Defendant Kelly with inadequate supervision.
25 Defendant Kelly was his own supervisor at the time of the incident, meaning he had
26 no supervision whatsoever. (Additional Fact 113 -- at 07:54:07 Defendant Kelly
27 can be heard angrily shouting “I AM THE SUPERVISOR” as he sprayed the
28 pepper spray into Plaintiff’s face.)

1 The County provided Defendant Kelly with inadequate discipline following
2 his many transgressions. (Additional Facts 140-151) He was repeatedly given
3 inconsequential slaps on the writ for being rude and abusive to motorists and other
4 members of the public -- “our employee could have been better.” (Additional Fact
5 141-145) Incredibly, after he himself drove off from a traffic stop, his reward for
6 admitting to rude, unprofessional, discrediting, officious, and overbearing (if not
7 illegal) conduct was a promotion to sergeant. (Additional Fact 148) After a use of
8 force incident where Defendant Kelly called an Hispanic inmate a “faggot” and
9 “little punk” and opened up the inmate’s cell door so that he could challenge the
10 inmate to a fight, Defendant Kelly was only given a 4 day suspension. However,
11 even here, the suspension was only for show. It was given almost 3 years after the
12 incident (in the interim Defendant Kelly had been promoted), and Defendant Kelly
13 admitted that he was never required to serve the suspension. (Additional Fact 150)

14 The County provided Defendant Kelly with inadequate training. Although
15 the County is good a checking boxes claiming they provided training, the proof is
16 in the product of that training. Defendant Kelly is a horribly arrogant law
17 enforcement officer. (Additional Facts 140-151) Defendant Kelly’s failure to use
18 de-escalation techniques was inconsistent with generally accepted police practices.
19 (Additional Fact 118) Defendant Kelly unnecessarily escalated the contact with
20 Plaintiff creating the need to use force that would have likely not have been
21 otherwise necessary. (Additional Fact 123) Had Defendant Kelly followed
22 generally accepted police practices and his department policy and used de-
23 escalation to gain voluntary compliance, it is likely that no force would have been
24 necessary. (Additional Fact 128) Defendant Kelly’s use of pepper spray on
25 Plaintiff was objectively unreasonable, excessive and inconsistent with generally
26 accepted police practices. (Additional Fact 129) Defendant Kelly’s punch to
27 Plaintiff’s face was excessive, objectively unreasonable and inconsistent with
28 generally accepted police practices. (Additional Fact 138)

1 Finally, it appears that the County falsified the investigation of this incident
2 to make it appear that the County's training was more effective than it actually was.
3 Defendant Kelly's superiors in their use of force review attempted to demonstrate
4 that Defendant Kelly was aware of appropriate de-escalation training and
5 techniques by stated Defendant Kelly appropriately used these techniques with an
6 uncooperative driver just 24 minutes prior to the incident involving Plaintiff.
7 However, the County has no record whatsoever of this prior incident. Furthermore,
8 in deposition, Defendant Kelly denied that any such incident took place. (Response
9 to Fact 67)

10 **D. The Los Angeles County Sheriff's Department's Sordid History of**
11 **Racial Profiling And Discriminatory Traffic Stops**

12 The incident that is the subject matter of this lawsuit happened while Plaintiff
13 was traveling to the Antelope Valley. However, it occurred in Santa Clarita, in a
14 northern part of the County, but just one Sheriff's Department station adjacent to
15 but south of the actual Antelope Valley. (Additional Fact 152)

16 The Los Angeles County Sheriff's Department has a long and sordid history
17 of racial profiling and discriminatory traffic stops, particularly in the County's
18 northern stations, such as the Antelope Valley. For years, black and Latino
19 residents in the Antelope Valley complained they were the victims of racially
20 biased stops and searches along with other mistreatment by Los Angeles County
21 Sheriff's deputies. In 2013, the US Department of Justice, Civil Rights Division
22 analyzed Sheriff's Department data from tens of thousands of vehicle and
23 pedestrian stops, interviewed hundreds of people and reviewed volumes of internal
24 sheriff's documents, and after this thorough analysis the Department of Justice
25 "found that LASD's Antelope Valley stations have engaged in a pattern or practice
26 of discriminatory and otherwise unlawful searches and seizures, including the use
27 of unreasonable force, in violation of the Fourth Amendment, the Fourteenth
28 Amendment, and Title VI." The findings forced the county to reach a legal

1 settlement with federal authorities in 2015 that called for significant reforms and
2 continued oversight. (Additional Fact 153)

3 However, despite all of this, the racial profiling and discriminatory traffic
4 stops persist, as evidenced by continued gross racial disparities. An NCCD report
5 from 2020 found on the Sheriff's Department's own website entitled, "An Analysis
6 of Racial/Ethnic Disparities in Stops by Los Angeles County Sheriff's Deputies in
7 the Antelope Valley" the report found that Black drivers make up 32% of all traffic
8 stops even though they account for only 17% of the population. The report also
9 found that black drivers once stopped were more likely to have both their vehicle
10 and their persons searched, more likely to experience backseat detentions, and more
11 likely to be asked if they are on probation or parole. All this is in spite of the fact
12 that black drivers have a much lower contraband discovery rate (15.4%) than either
13 their white or Hispanic counterparts (24.4% and 22.3% respectfully). This problem
14 with racial profiling and discriminatory traffic stops in the Antelope Valley is not
15 an isolated single incident, but rather a persistent and ongoing problem with the Los
16 Angeles County Sheriff's Department recognized by the US Department of Justice,
17 Civil Rights Division. (Additional Fact 154)

18 The racial disparities also existed in those suspicious use of force incidents
19 (such as the incident between Plaintiff and Defendant KELLY) where a suspect was
20 charged with only resisting arrest or obstructing an officer but no other crimes.
21 U.S. Department of Justice, Civil Rights Division found as follows: "Perhaps most
22 strikingly, we found that 81% of the uses of force we reviewed where the only
23 charge was obstruction-related involved targets who were African American or
24 Latino. For the 25 felony obstruction-only arrests, 88% involved victims who were
25 people of color. This is an extraordinarily disproportionate number of obstruction
26 charges involving use of force against people of color and warrants close attention
27 by the Department. See, *Arlington Heights*, 429 U.S. at 266 (intent may be
28

1 established by "clear pattern, unexplainable on grounds other than race")."

2 (Additional Fact 155)

3 The US DOJ's findings and the findings of the Sheriff's Department's own
4 oversight monitors show that the unconstitutional racial profiling and
5 discriminatory traffic stops in the northern parts of the Sheriff's Department's
6 jurisdiction, as well as the County's supervision, training, retention, promotion and
7 rewarding of violent and abusive deputies such as Defendant Kelly reflect the
8 County's unwritten policies, customs, practices and usages in violation of the
9 Fourth and Fourteenth Amendment respectively to the United States Constitution,
10 which policies, customs, practices, and usages resulted in Plaintiff's injury and the
11 County's *Monell* liability. (Additional Fact 156)

12 **III. DEFENDANT KELLY'S ARREST OF PLAINTIFF WAS WITHOUT**
13 **PROBABLE CAUSE**

14 Plaintiff alleges that he was unlawfully arrested. "A claim for unlawful arrest
15 is cognizable under § 1983 as a violation of the Fourth Amendment, provided the
16 arrest was without probable cause or other justification." [*Dubner v. City & Cnty. of*
17 *S.F.* (9th Cir. 2001) 266 Fed.3d 959, 964] Defendants' current motion presents the
18 same arguments previously rejected by this Court on Defendant's motion to
19 dismiss. The evidence currently before the Court bears out all of the allegations
20 made in the Complaint. The evidence, as set forth above, shows that Plaintiff was
21 "obeying all traffic laws, rules, and regulations" when he "made a legal right hand
22 turn on a green light." (FAC § 10.) The light was green light. There were no
23 pedestrians in the crosswalk. Thus, there was no probable cause for the traffic stop
24 in the first place. Rather, the stop was the result of unlawful racial profiling, not
25 anything illegal that Plaintiff did. After the illegal stop, Defendant Kelly retaliated
26 against Plaintiff and used force against him not for anything illegal that Plaintiff
27 did, but for attempting to record the encounter on his mobile phone. Plaintiff did
28 not kick Defendant Kelly and Plaintiff did not punch Deputy Clark. Rather,

1 Defendant Kelly pepper sprayed Plaintiff in retaliation for asking to see Defendant
2 Kelly's supervisor. The arrest was without probable cause or other justification and
3 in clear violation of Plaintiff's Constitutional rights.

4 **IV. DEFENDANT KELLY IS NOT PROTECTED BY QUALIFIED**
5 **IMMUNITY**

6 Statutory immunity protects government official unless their actions violates
7 "clearly established statutory or Constitutional rights of which a reasonable person
8 would have known." [*Harlow v. Fitzgerald* (1981) 457 U.S. 800] Defendant
9 Kelly's traffic stop of Plaintiff was made without probable cause and constituted
10 racial profiling. Defendant Kelly's arrest and use of force against Plaintiff was
11 excessive, objectively unreasonable, and inconsistent with generally accepted
12 police practices. The facts, as set forth above, do not show a mistake or a slight
13 lapse of judgment, but rather show a clear violation of Plaintiff's Constitutional
14 rights about which any reasonable person would know.

15 **V. THE COUNTY IS LIABLE FOR ITS UNSTATED POLICIES AND**
16 **PRACTICES THAT ENABLED DEFENDANT KELLY'S VIOLATION OF**
17 **PLAINTIFF'S RIGHTS**

18 For liability against a municipality, a plaintiff must allege that he was
19 deprived of a constitutional right and that the municipality "had a deliberate policy,
20 custom, or practice that was the 'moving force' behind the constitutional violation
21 he suffered." *Galen v. Cnty. of L.A.*, 477 F.3d 652, 667 (9th Cir. 2007) (quoting
22 *Monell v. Dep't of Soc. Servs. of the City of N.Y.C.*, 436 U.S. 658, 694-95 (1978)).
23 A plaintiff must allege either an official policy or a "longstanding practice or
24 custom which constitutes the standard operating procedure of the local government
25 entity." *Zrevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

26 Defendants argue that there is no evidence of a County practice that resulted
27 in Plaintiff's injuries. However, as set forth above, there is. Defendant Kelly's
28 personnel records demonstrate that he has a very checkered past. He has

1 demonstrated animosity towards people of color. He has a long history of rude and
2 abusive conduct towards motorists and the public that was not only condoned but
3 actually rewarded due to the County's inadequate supervision, discipline and
4 training. The County coddled Defendant Kelly and encouraged his violations of
5 stated policies with a promotion. This, combined with the findings of the U.S.
6 Department of Justice and the National Council on Crime & Delinquency
7 ("NCCD") demonstrate that the County had an unstated policy of employing
8 deputies to bully and harass African American drivers by way of initiating frivolous
9 traffic stops, making arrests without probable cause, and using excessive force –
10 exactly what happened to Plaintiff.

11 Defendants argue that the findings of the Justice Department and the NCCD
12 only concern the Antelope Valley stations and are irrelevant here. Plaintiff was
13 traveling to the Antelope Valley at the time of the incident. However, the traffic
14 stop actually took place in Santa Clarita -- another northern area of the County and
15 just one Sheriff's Department station adjacent to but south of the actual Antelope
16 Valley. The studies concern the same governmental entity, the Los Angeles County
17 Sheriff's Department, which has the same policies and procedures regardless of the
18 station. The fact that there are a few off ramps on the 14 freeway separating
19 Defendant Kelly's station from the stations subject to the report, would only
20 potentially go to weight, not admissibility.

21 **VI. DEFENDANT KELLY IS LIABLE FOR PUNITIVE DAMAGES**

22 Punitive damages may be available against governmental employees acting
23 in their individual capacities. [See, *Monell v. New York City Dept. of Soc. Services*,
24 436 U.S. 658 (1978); *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 254
25 (1981).] In Section 1983 claims, "[i]t is well-established that a 'jury may award
26 punitive damages . . . either when a defendant's conduct was driven by evil motive
27 or intent, or when it involved a reckless or callous indifference to the constitutional
28 rights of others.'" [*Morgan v. Woessner*, 997 F.2d 1244, 1255 (9th Cir.1993).]

1 “The standard for punitive damages under § 1983 mirrors the standard for punitive
2 damages under common law tort cases. . . . [M]alicious, wanton, or oppressive acts
3 or omissions are within the boundaries of traditional tort standards for assessing
4 punitive damages and foster ‘deterrence and punishment over and above that
5 provided by compensatory awards.’ . . . Such acts are therefore all proper predicates
6 for punitive damages under § 1983.” [*Dang v. Cross*, 422 F.3d 800, 807 (9th Cir.
7 2005) (citing *Smith v. Wade*, 416 U.S. 30, 49(1983)).]

8 Defendants argue that Defendant Kelly should not face the prospect of
9 punitive damages. Defendants argue there is no evidence of malice, oppression, or
10 disregard of Plaintiff’s rights. Obviously, this is a question for the jury. The
11 evidence suggests Defendant Kelly acted without probable cause and his violent use
12 of force was excessive, objectively unreasonable and inconsistent with generally
13 accepted police practices. Certainly, the jury could reasonably determine that
14 Defendant Kelly acted in malice, oppression, or in disregard of Plaintiff’s rights.

15 **VII. PLAINTIFF REQUESTS THAT THE COURT DENY THIS MOTION**
16 **PURSUANT TO FRCP RULE 56(d), OR IN THE ALTERNATIVE, TO**
17 **DEFER RULING ON THIS MOTION UNTIL PLAINTIFF CAN PRESENT**
18 **ADDITIONAL DISCOVERY AND DECLARATIONS**

19 If the opposing party shows (by affidavit or declaration) that, for specified
20 reasons, it cannot present facts essential to justify its opposition, “the court may: (1)
21 defer considering the motion or deny it; (2) allow time to obtain affidavits or
22 declarations or to take discovery; or (3) issue any other appropriate order.” [FRCP
23 56(d); See, *Celotex Corp. v. Catrett* (1986) 477 U.S. 317, 106 S.Ct. 2548,
24 2554; *Rivera-Torres v. Rey-Hernández* (1st Cir. 2007) 502 Fed.3d 7, 10—rule
25 provides useful safety valve “against judges swinging the summary judgment axe
26 too hastily”] To obtain postponement or denial for further discovery, the opposing
27 party’s declaration must show the following: 1) facts indicating a likelihood that
28 controverting evidence exists as to a material fact; 2) specific reasons why such

evidence was not discovered or obtained earlier in the proceedings (i.e., “good cause”); 3) the steps or procedures by which the opposing party proposes to obtain such evidence within a reasonable time; and 4) an explanation of how those facts will suffice to defeat the pending summary judgment motion (i.e., to rebut the movant’s allegations of no genuine issue of material fact). [*Tatum v. City & County of San Francisco* (9th Cir. 2006) 441 Fed.3d 1090, 1101; *Trask v. Franco* (10th Cir. 2006) 446 Fed.3d 1036, 1042; *In re PHC, Inc. Shareholder Litig.* (1st Cir. 2014) 762 Fed.3d 138, 143-144—Rule 56(d) requirements can be summarized as “authoritativeness, timeliness, good cause, utility, and materiality”]

As set forth in the declaration of Thomas M. Ferlauto, Plaintiff has shown good cause for relief under FRCP Rule 56(d).

VIII. CONCLUSION

For the reasons set forth above, Defendants motion for partial summary judgment should be denied.

DATED: June 5th, 2023

The Law Office Of Thomas M. Ferlauto, APC

By: _____



Thomas M. Ferlauto

Attorney For: Plaintiff, JOSHUA ASSIFF